

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36048

PETITION OF THE NATIONAL RAILROAD PASSENGER CORPORATION FOR RELIEF  
PURSUANT TO 49 U.S.C. § 24905

Decided: August 9, 2016

On June 24, 2016, the National Railroad Passenger Corporation (Amtrak) filed a petition under 49 U.S.C. § 24905 (Petition) seeking an order determining the appropriate compensation amounts between Amtrak and the Massachusetts Bay Transportation Authority (MBTA) in accordance with the Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy (the Policy) developed by the Northeast Corridor Commission. By decision served July 8, 2016, the Board granted MBTA's consented-to motion to extend the deadline for filing its reply to the Petition to August 15, 2016.

On August 2, 2016, MBTA moved to hold this proceeding in abeyance pending resolution of litigation under way in federal district court<sup>1</sup> challenging the constitutionality of the mechanism under 49 U.S.C. § 24905 by which the Policy was established.<sup>2</sup> Concurrently, MBTA moved to extend its deadline to reply to Amtrak's Petition until after the Board rules upon its abeyance motion. MBTA argues that if its abeyance motion is granted, there would be no need to reply to the Petition until after the federal court litigation is resolved (if at all) and that postponing the reply deadline thus would conserve the financial resources of MBTA, a taxpayer-funded state government entity. MBTA asserts that if the motion for abeyance is denied, it would be prepared to reply to the Petition within 10 business days of that denial. Amtrak opposed the requested extension on August 5, 2016, asserting that a further extension of the reply deadline would serve no purpose other than delay and that prompt resolution of this case is needed in light of Amtrak's urgent need for reimbursement for services provided to MBTA.

The reply deadline may be extended in the Board's discretion, for good cause. See 49 C.F.R. § 1104.7(b). While the Board recognizes Amtrak's concern about the need to timely resolve this dispute, if the Board were to deny the motion for abeyance, postponing MBTA's reply deadline until shortly after that denial would not significantly delay resolution of this case. If the Board grants the motion for abeyance, the need for MBTA to file a reply could be significantly postponed, or even eliminated altogether, depending on the outcome of the pending federal court litigation. For these reasons, MBTA's motion to extend its deadline to reply to the

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<sup>1</sup> Mass. Bay Transp. Auth. v. Nat. R.R. Passenger Corp., No. 16-10120 (D. Mass.).

<sup>2</sup> MBTA's abeyance motion will be addressed in a subsequent decision.

Petition will be granted.

The deadline for MBTA to reply to the Petition will be addressed in the Board's decision on the motion to hold this proceeding in abeyance.

It is ordered:

1. MBTA's motion to extend its deadline to reply to the Petition is granted.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.